

PATTY MURRAY, WASHINGTON
ROBERT P. CASEY, JR., PENNSYLVANIA
TAMMY BALDWIN, WISCONSIN
CHRISTOPHER MURPHY, CONNECTICUT
TIM Kaine, VIRGINIA
MARGARET WOOD HASSAN, NEW HAMPSHIRE
TINA SMITH, MINNESOTA
BEN RAY LUJÁN, NEW MEXICO
JOHN W. HICKENLOOPER, COLORADO
EDWARD J. MARKEY, MASSACHUSETTS

BILL CASSIDY, LOUISIANA
RAND PAUL, KENTUCKY
SUSAN M. COLLINS, MAINE
LISA MURKOWSKI, ALASKA
MIKE BRAUN, INDIANA
ROGER MARSHALL, KANSAS
MITT ROMNEY, UTAH
TOMMY TUBERVILLE, ALABAMA
MARKWAYNE MULLIN, OKLAHOMA
TED BUDD, NORTH CAROLINA

United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

WARREN GUNNELS, MAJORITY STAFF DIRECTOR
AMANDA LINCOLN, REPUBLICAN STAFF DIRECTOR

www.help.senate.gov

August 28, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Lauren McFerran
Chair
National Labor Relations Board
1015 Half Street, SE
Washington, D.C. 20570

Dear Chair McFerran:

Member Gwynne Wilcox's term expired on August 27, 2023. While the Senate expects to proceed to a cloture vote on her nomination, I seek assurances the National Labor Relations Board (NLRB or Board) has terminated her employment appropriately and is following all separation protocols for a federal appointee whose term has expired. Further, I remind you that should former Member Wilcox be re-confirmed by the Senate, the NLRB must wait until it receives a signed Commission from the President before it swears her in.

The National Labor Relations Act (NLRA) does not have a holdover provision for Members and historically has not moved them to advisory roles while they await confirmation. In fact, Members whose term have lapsed are to vacate the building and have no contact with the NLRB in adherence of the Biden Administration's Ethics Pledge,¹ to include representing clients before the Board or conducting NLRB business.²

Members of the Board are Presidentially appointed and Senate confirmed individuals. There is no precedent of moving a Member to an advisory position in expectation of confirmation. As such, it is imperative you protect the integrity of the Board and assure Congress that you have taken appropriate steps to remove former Member Wilcox from Board deliberations and actions until the Senate has acted.

Please provide answers regarding Member Wilcox's term expiry on a question-by-question basis, rather than narrative format, to the following by September 1, 2023.

- Has former Member Wilcox been moved to an advisory role or separated from the Board?

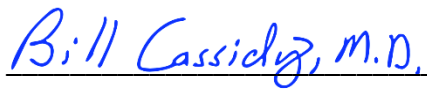
¹ <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01762.pdf>

² [18 U.S. Code § 207 - Restrictions on former officers, employees, and elected officials of the executive and legislative branches | U.S. Code | US Law | LII / Legal Information Institute \(cornell.edu\)](#)

- If she has been separated, does former Member Wilcox have access to any government computers, phones, or personnel to discuss NLRB work?
- Did the Designated Agency Ethics Officer or other Board personnel conduct an exit conference with Member Wilcox to inform her of any ethics obligations to recuse herself or not appear before the Board for the year after her term's expiration?
- Please provide any and all documentation regarding the surrendering of former Member Wilcox's access to government electronics, email systems, PIV card, or any other material that all government employees must complete upon separation.
- Please provide any and all documentation that former Member Wilcox has acknowledged her responsibilities related to the one year period that she is not to practice or appear before the Board.

Thank you for your prompt attention to this matter.

Sincerely,



Bill Cassidy, M.D.
Ranking Member
U.S. Senate Committee on Health,
Education, Labor, and Pensions